

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT NIGHTINGALE, MISTY  
NIGHTINGALE, MARTIN PAWL and CAROL  
PAWL,

UNPUBLISHED  
May 27, 2014

Plaintiffs-Appellants,

v

TOWNSHIP OF SHELBY,

No. 314491  
Macomb Circuit Court  
LC No. 12-002399-CK

Defendant-Appellee.

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Before: MARKEY, P.J., and SAWYER and WILDER, JJ.

PER CURIAM.

Plaintiffs appeal from an order of the circuit court granting summary disposition to defendants under MCR 2.116(C)(8) and (10) and denying plaintiffs' motion for summary disposition under MCR 2.116(C)(10). We reverse and remand.

The relevant facts to this appeal are not in dispute. Robert Nightingale and Martin Pawl are retired employees of the Shelby Township Fire Department. Nightingale retired in 1997 and Paul retired in 2008. At the time of his retirement, Nightingale was married to his wife, Lillis. Lillis Nightingale passed away in 2009. Thereafter, he married his current wife, plaintiff Misty Nightingale. Pawl was divorced and unmarried at the time of his retirement. He too remarried after retirement, to plaintiff Carol Pawl. The retirees sought healthcare benefits from defendant for their wives, but were denied. Defendant takes the position that only individuals who were spouses at the time of retirement are entitled to retirement healthcare benefits.<sup>1</sup> Although Nightingale and Pawl retired under different collective bargaining agreements (CBAs), the provisions in both agreements with regard to retirement healthcare benefits are the same and read as follows:

Article 22.4. Upon the regular retirement or non-service connected disability retirement of any full time Employee pursuant to Act 345, the Employer shall provide hospitalization insurance coverage for such Employee, his spouse

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<sup>1</sup> Defendant did provide healthcare benefits to Lillis Nightingale until her death in 2009.

and dependent children provided retiree or spouse does not have such coverage provided by other employment.

It is undisputed that Nightingale and Pawl are entitled to retirement healthcare benefits under this provision. The only dispute is whether their spouses are entitled to benefits based upon their marital status at the time of the retirees' retirement.

The trial court granted summary disposition in favor of defendant based upon the conclusion that the definition of "spouse" under Act 345 controls the definition of "spouse" in Article 22.4 of the CBAs and that that definition limits the term "spouse" to a person who was a spouse at the time of the retiree's retirement. While there is such a definition in Act 345, we disagree that it is applicable here.

We begin by noting that we review the trial court's decision on a summary disposition motion de novo. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). We also review de novo the interpretation of a contract. *Id.* The definition of "spouse" to which defendant and the trial court look is found in MCL 38.556(1)(h), which provides in relevant part as follows: "As used in this subsection, 'spouse' means the person to whom the retirant was legally married on both the effective date of retirement and the date of death." We find defendant's argument, as well as the trial court's conclusion, based upon this statutory provision to be both legally and grammatically incorrect.

Assuming that Act 345 applies here, a point we will consider shortly, MCL 38.556(1)(h) does nothing to affect the definition of "spouse" under Article 22.4 of the CBAs. As the above-quoted language makes clear, the definition of "spouse" utilized in MCL 38.556(1)(h) is explicitly limited to the use of that term in that subsection. Therefore, even if the introductory clause to Article 22.4 engrafts Act 345 into the CBAs, it would not pick up a definition supplied by Act 345 that explicitly limits itself to the use of that definition to one specific subsection of the act. That is, if the definition does not even apply to the entire act, it can hardly be said that that definition applies to an outside document that merely makes a general reference to the act. This is especially true given that that subsection of MCL 38.556 does not even deal with retirement healthcare benefits, but with the calculation of survivor pension benefits.<sup>2</sup> Absent explicit language in Article 22.4 that it was adopting the definition of "spouse" as contained in MCL 38.556(1)(h), a mere general reference to Act 345 cannot be read as engrafting that definition into the CBAs.

Turning to the grammatical problems with defendant's argument, we note that even if Act 345 had such a limited definition of "spouse" that generally applied to the act as a whole, the

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<sup>2</sup> Defendant's argument on this particular point is nonsensical. Defendant argues that to conclude that MCL 38.556(1)(h) is limited to a retiree's survivor pension benefits ignores the first sentence of that subsection and takes the word "spouse" out of context. By its very terms, this provision deals with, and only with, a retiree's options with respect to his or her pension benefit, including an option to either take a full pension or a reduced pension with a survivor's benefit, and a surviving spouse's pension benefit.

introductory clause to Article 22.4 cannot be read as applying the definitions of the act to Article 22.4. The phrase “Upon the regular retirement or non-service connected disability retirement of any full time Employee pursuant to Act 345” is an introductory temporal phrase that functions as an adverb. As such, it modifies the verb, not the indirect object. See generally, Garner, *The Redbook: A Manual on Legal Style* (3d ed), pp 206-207. That is, it modifies the verb “provide” rather than the indirect object “spouse.” In other words, the phrase defines *when* defendant is obligated to provide healthcare benefits: upon the regular or non-service connected disability retirement of an employee in accordance with Act 345. That is, the retirement is the triggering event for the entitlement to the benefit. The phrase does not provide a further definition of *who* is entitled to the benefits; it does not engraft any definition of “spouse” under Act 345 into the CBAs.

For the same reason, the trial court was grammatically incorrect when it concluded that the phrase “upon the regular retirement” somehow modifies “spouse” to establish when a person had to be a spouse of a retiree in order to be eligible for healthcare benefits (i.e., they had to be a spouse at the time of retirement). Because the adverbial clause modifies “provide” and not “spouse,” it simply does not provide a time-frame for when the beneficiary had to be a spouse.<sup>3</sup>

Defendant additionally argues that the modified definition of “spouse” is consistent with the principle that retirement benefits under a CBA vest, if at all, at the time of retirement. See *Butler v Wayne Co*, 289 Mich App 664, 676; 798 NW2d 37 (2010). But that principle would only apply to whether there is a right to healthcare benefits, not the identity of the member of the class to whom benefits are available (i.e., the identity of the spouse and dependent children).

Defendant next argues that, if we find Article 22.4 to be ambiguous, we should look to the township’s past practice of denying healthcare benefits to individuals who only became spouses after the employee’s retirement. Because we do not find the language to be ambiguous, we need not address this argument. Moreover, we note that the trial court declined to address this argument, though its opinion suggests that there was no such firmly established past practice.

We also need not address defendant’s final argument, which is that, if we find the language to be ambiguous, we should reject plaintiffs’ interpretation of Article 22.4 because it is absurd and unreasonable. We would, however, note that we would be unwilling to conclude, as a matter of law, that it is either absurd or unreasonable for parties to agree to provide healthcare benefits to a spouse or a dependent child even if that relationship was not established until after

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<sup>3</sup> We would also note that, under the trial court’s interpretation, it would compel a result that is unlikely to have been contemplated by the parties. Specifically, if “upon the regular retirement” is read as establishing when a person had to be eligible to receive benefits, then it would necessarily follow that those individuals would remain eligible for benefits for the rest of their lives regardless of any change in status of eligibility. That is, a person who was a spouse at the time of the retiree’s retirement would remain entitled to benefits for the rest of his or her life even if they divorced the retiree. Similarly, any dependent child at the time of the retiree’s retirement would remain eligible for benefits for the rest of his or her life even long after they ceased to be dependent on the retiree.

an employee's retirement. The only absurdity here is defendant's argument that plaintiffs' interpretation creates an "astronomical risk" of abuse by retirees who might engage in "sham marriages" in order to obtain benefits.<sup>4</sup> But, even if defendant's argument that plaintiffs' interpretation would be unreasonable would have merit, because we find the contract language unambiguous, we cannot engage in a determination of reasonableness. Rather, we must enforce the contract as written. *Rory*, 473 Mich at 468-469. In any event, if there truly is such a danger present, defendant would be well advised to press for language in future contracts that limits the spousal healthcare benefit to "legitimate marriages" and to provide a definition of what constitutes a legitimate marriage.

For these reasons, we conclude that the trial court erred in denying plaintiffs' motion for summary disposition and in granting summary disposition to defendant.

Reversed and remanded to the trial court with instructions to enter summary disposition in favor of plaintiffs. We do not retain jurisdiction. Plaintiffs may tax costs.

/s/ Jane E. Markey  
/s/ David H. Sawyer  
/s/ Kurtis T. Wilder

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<sup>4</sup> It is unclear to us why such an "astronomical risk" only exists after an employee retires.